

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

WILLIAM MICHAEL BRIMER
62 E. Sierra Way
Chula Vista, CA 91911

Applicant for Registered Nurse License

Respondent

Case No. 2012-230

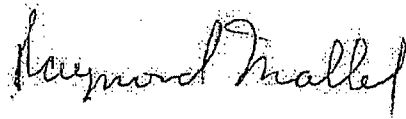
OAH No. 2011100919

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **September 07, 2012.**

IT IS SO ORDERED **August 8, 2012.**



Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

13 **WILLIAM MICHAEL BRIMER**
14 **62 E. Sierra Way**
Chula Vista, CA 91911

15 Respondent.

Case No. 2012-230

OAH No. 2011100919

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
20 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
21 which will be submitted to the Board for approval and adoption as the final disposition of the
22 Statement of Issues.

23 **PARTIES**

24 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
25 Registered Nursing. She brought this action solely in her official capacity and is represented in
26 this matter by Kamala D. Harris, Attorney General of the State of California, by Karen L.
27 Gordon, Deputy Attorney General.
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1 2. William Michael Brimer (Respondent) is represented in this proceeding by attorney
2 Steven Zeigen, whose address is: 401 B Street, Suite 2209, San Diego, CA 92101

3 3. On or about February 14, 2011, Respondent filed an application dated January 30,
4 2011, with the Board of Registered Nursing to obtain a Registered Nurse License.

5 **JURISDICTION**

6 4. Statement of Issues No. 2012-230 was filed before the Board of Registered Nursing
7 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
8 Statement of Issues and all other statutorily required documents were properly served on
9 Respondent on October 11, 2011. A copy of Statement of Issues No. 2012-230 is attached as
10 Exhibit A and incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Statement of Issues No. 2012-230. Respondent has also carefully read,
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
15 Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-
18 examine the witnesses against him; the right to present evidence and to testify on his own behalf;
19 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
20 documents; the right to reconsideration and court review of an adverse decision; and all other
21 rights accorded by the California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 8. Respondent admits the truth of each and every charge and allegation in Statement of
26 Issues No. 2012-230.

9. Respondent agrees that his application for Registered Nurse License is subject to denial and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

1 3. **Report in Person.** Respondent, during the period of probation, shall appear in
2 person at interviews/meetings as directed by the Board or its designated representatives.

3 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
4 practice as a registered nurse outside of California shall not apply toward a reduction of this
5 probation time period. Respondent's probation is tolled, if and when he resides outside of
6 California. Respondent must provide written notice to the Board within 15 days of any change of
7 residency or practice outside the state, and within 30 days prior to re-establishing residency or
8 returning to practice in this state.

9 Respondent shall provide a list of all states and territories where he has ever been licensed
10 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
11 information regarding the status of each license and any changes in such license status during the
12 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
13 license during the term of probation.

14 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
15 or cause to be submitted such written reports/declarations and verification of actions under
16 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
17 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
18 Respondent shall immediately execute all release of information forms as may be required by the
19 Board or its representatives.

20 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
21 state and territory in which he has a registered nurse license.

22 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
23 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
24 6 consecutive months or as determined by the Board.

25 For purposes of compliance with the section, "engage in the practice of registered nursing"
26 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
27 non-direct patient care position that requires licensure as a registered nurse.

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1 The Board may require that advanced practice nurses engage in advanced practice nursing
2 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

3 If Respondent has not complied with this condition during the probationary term, and
4 Respondent has presented sufficient documentation of his good faith efforts to comply with this
5 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
6 extension of Respondent's probation period up to one year without further hearing in order to
7 comply with this condition. During the one year extension, all original conditions of probation
8 shall apply.

9 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
10 prior approval from the Board before commencing or continuing any employment, paid or
11 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
12 performance evaluations and other employment related reports as a registered nurse upon request
13 of the Board.

14 Respondent shall provide a copy of this Decision to his employer and immediate
15 supervisors prior to commencement of any nursing or other health care related employment.

16 In addition to the above, Respondent shall notify the Board in writing within seventy-two
17 (72) hours after he obtains any nursing or other health care related employment. Respondent
18 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
19 regardless of cause, from any nursing, or other health care related employment with a full
20 explanation of the circumstances surrounding the termination or separation.

21 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
22 Respondent's level of supervision and/or collaboration before commencing or continuing any
23 employment as a registered nurse, or education and training that includes patient care.

24 Respondent shall practice only under the direct supervision of a registered nurse in good
25 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
26 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
27 approved.

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Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

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Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Violation of Probation.** If Respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. **License Surrender.** During Respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license

has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

13. **Physical Examination.** Within 45 days of the effective date of this Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse, including a determination as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts

1 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
2 Only one such waiver or extension may be permitted.

3 **14. Mental Health Examination.** Respondent shall, within 45 days of the effective date
4 of this Decision, have a mental health examination including psychological testing as appropriate
5 to determine his capability to perform the duties of a registered nurse, including a determination
6 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The
7 examination will be performed by a psychiatrist, psychologist or other licensed mental health
8 practitioner approved by the Board. The examining mental health practitioner will submit a
9 written report of that assessment and recommendations to the Board. All costs are the
10 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
11 result of the mental health examination will be instituted and followed by Respondent.

12 If Respondent is determined to be unable to practice safely as a registered nurse, the
13 licensed mental health care practitioner making this determination shall immediately notify the
14 Board and Respondent by telephone, and the Board shall request that the Attorney General's
15 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
16 practice and may not resume practice until notified by the Board. During this period of
17 suspension, Respondent shall not engage in any practice for which a license issued by the Board
18 is required, until the Board has notified Respondent that a mental health determination permits
19 Respondent to resume practice. This period of suspension will not apply to the reduction of this
20 probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within the 45-day
22 requirement, Respondent shall immediately cease practice and shall not resume practice until
23 notified by the Board. This period of suspension will not apply to the reduction of this
24 probationary time period. The Board may waive or postpone this suspension only if significant,
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
26 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
27 Only one such waiver or extension may be permitted.

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1 **15. Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical
2 and/or mental health examination determines that the respondent is dependent upon drugs or
3 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol
4 dependence in remission), that might reasonably affect the safe practice of nursing, then the
5 respondent must further comply with the following additional terms and conditions of probation:

6 **A. Participate in Treatment/Rehabilitation Program for Chemical**

7 **Dependence.** Respondent, at his expense, shall successfully complete during the
8 probationary period or shall have successfully completed prior to commencement
9 of probation a Board-approved treatment/rehabilitation program of at least six
10 months duration. As required, reports shall be submitted by the program on forms
11 provided by the Board. If Respondent has not completed a Board-approved
12 treatment/rehabilitation program prior to commencement of probation,
13 Respondent, within 45 days from the effective date of the decision, shall be
14 enrolled in a program. If a program is not successfully completed within the first
15 nine months of probation, the Board shall consider Respondent in violation of
16 probation.

17 Based on Board recommendation, each week Respondent shall be required
18 to attend at least one, but no more than five 12-step recovery meetings or
19 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
20 support group as approved and directed by the Board. If a nurse support group is
21 not available, an additional 12-step meeting or equivalent shall be added.
22 Respondent shall submit dated and signed documentation confirming such
23 attendance to the Board during the entire period of probation. Respondent shall
24 continue with the recovery plan recommended by the treatment/rehabilitation
25 program or a licensed mental health examiner and/or other ongoing recovery
26 groups.

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1 B. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
2 shall completely abstain from the possession, injection or consumption by any
3 route of all controlled substances and all psychotropic (mood altering) drugs,
4 including alcohol, except when the same are ordered by a health care professional
5 legally authorized to do so as part of documented medical treatment. Respondent
6 shall have sent to the Board, in writing and within fourteen (14) days, by the
7 prescribing health professional, a report identifying the medication, dosage, the
8 date the medication was prescribed, the Respondent's prognosis, the date the
9 medication will no longer be required, and the effect on the recovery plan, if
10 appropriate.

11 Respondent shall identify for the Board a single physician, nurse
12 practitioner or physician assistant who shall be aware of Respondent's history of
13 substance abuse and will coordinate and monitor any prescriptions for Respondent
14 for dangerous drugs, controlled substances or mood-altering drugs. The
15 coordinating physician, nurse practitioner, or physician assistant shall report to the
16 Board on a quarterly basis Respondent's compliance with this condition. If any
17 substances considered addictive have been prescribed, the report shall identify a
18 program for the time limited use of any such substances.

19 The Board may require the single coordinating physician, nurse
20 practitioner, or physician assistant to be a specialist in addictive medicine, or to
21 consult with a specialist in addictive medicine.

22 C. **Submit to Tests and Samples.** Respondent, at his expense, shall
23 participate in a random, biological fluid testing or a drug screening program which
24 the Board approves. The length of time and frequency will be subject to approval
25 by the Board. Respondent is responsible for keeping the Board informed of
26 Respondent's current telephone number at all times. Respondent shall also ensure
27 that messages may be left at the telephone number when she is not available and
28 ensure that reports are submitted directly by the testing agency to the Board, as

1 directed. Any confirmed positive finding shall be reported immediately to the
2 Board by the program and Respondent shall be considered in violation of
3 probation.

4 In addition, Respondent, at any time during the period of probation, shall
5 fully cooperate with the Board or any of its representatives, and shall, when
6 requested, submit to such tests and samples as the Board or its representatives may
7 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
8 controlled substances.

9 If Respondent has a positive drug screen for any substance not legally
10 authorized and not reported to the coordinating physician, nurse practitioner, or
11 physician assistant, and the Board files a petition to revoke probation or an
12 accusation, the Board may suspend Respondent from practice pending the final
13 decision on the petition to revoke probation or the accusation. This period of
14 suspension will not apply to the reduction of this probationary time period.

15 If Respondent fails to participate in a random, biological fluid testing or
16 drug screening program within the specified time frame, Respondent shall
17 immediately cease practice and shall not resume practice until notified by the
18 Board. After taking into account documented evidence of mitigation, if the Board
19 files a petition to revoke probation or an accusation, the Board may suspend
20 Respondent from practice pending the final decision on the petition to revoke
21 probation or the accusation. This period of suspension will not apply to the
22 reduction of this probationary time period.

23 **D. Therapy or Counseling Program.** Respondent, at his expense, shall
24 participate in an on-going counseling program until such time as the Board
25 releases him from this requirement and only upon the recommendation of the
26 counselor. Written progress reports from the counselor will be required at various
27 intervals.
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Steven Zeigen. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

1/3/2012

William Brimer
WILLIAM MICHAEL BRIMER
Respondent

APPROVAL

I have read and fully discussed with Respondent William Michael Brimer the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

1/3/2012

Steven Zeigen
STEVEN ZEIGEN
Attorney for Respondent

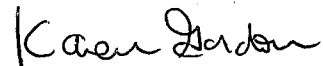
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 1-4-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

SD2011800836
80587554.doc

Exhibit A

Statement of Issues No. 2012-230

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2012-230

13 **WILLIAM MICHAEL BRIMER**
14 **4304 View Place**
San Diego, CA 92115

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about February 14, 2011, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from William Michael
24 Brimer (Respondent). On or about January 30, 2011 William Michael Brimer certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on May 25, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 (f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of
20 the conviction shall be conclusive evidence thereof. . . .

21 9. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the meaning
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
24 licensed under this chapter to do any of the following:

25 (b) Use any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
28 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the

substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (April 7, 2011 Criminal Conviction for Driving Under the Influence of Alcohol
3 With BAC of 0.08% or More on February 23, 2011)

4 12. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
5 and 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially
6 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
7 follows:

8 a. On or about April 7, 2011, in a criminal proceeding entitled *The People of*
9 *the State of California v. William M. Brimer*, in the San Diego Superior court, Central Division,
10 Case No. M127412, Respondent was convicted on his plea of guilty to violating Vehicle Code
11 section 23152(b) (driving under the influence of alcohol with a BAC of 0.08% or More), to wit:
12 BAC of 0.23%, a misdemeanor.

13 b. As a result of the conviction, Respondent was placed on summary
14 probation for five (5) years and ordered, among other things, to pay various fees and fines, enroll
15 in and complete a 10-day Public Service Program, enroll in and complete a 9-month MADD
16 program, not drive with a measurable amount of alcohol/drugs in his blood, submit to any test as
17 requested by a peace officer, and violate no laws.

18 c. The facts that led to the conviction are that on or about February 23, 2011, at
19 approximately 1930 hours, San Diego Police Officers responded to a call regarding an automobile
20 accident at 6000 University Avenue, San Diego, CA. Upon arrival, officers talked to the party
21 most at fault, Respondent. Officers observed that Respondent displayed symptoms of being
22 under the influence of alcohol. Officers asked Respondent if he would perform a Field Sobriety
23 Test and Respondent told officers that he did not want to perform the tests because he knew he
24 would fail. Officers arrested Respondent for driving under the influence of alcohol and
25 transported him to headquarters where he submitted to a breath test. The results of the breath test
26 came back at 0.23% BAC.

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